SUPR... MOTION FILED
NOV 11 1971

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-563

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington nonprofit corporation, et al.,
Petitioners,

vs.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF AMICI CURIAE ON BEHALF OF MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, A GEORGIA NONPROFIT CORPORATION, AND EASTERN HEIGHTS PRESBYTERIAN CHURCH, A GEORGIA NONPROFIT CORPORATION

OWEN H. PAGE
Attorney for Mary Elizabeth Blue Hull Memorial Presbyterian Church, a Georgia nonprofit corporation, and Eastern Heights Presbyterian Church, a Georgia nonprofit corporation

305 Realty Building
Savannah, Georgia 31401

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

SUBJECT INDEX

Motion for Leave to File Brief As *Amici Curiae* 1
Certificate of Service 4
Brief of *Amici Curiae* 5
The Status of the *Amici Curiae* 5
The Opinion Below 5
Statement of the Case 6
Argument 6

I. The Supreme Court of Washington Has Flouted the Command of This Court As It Did Not Apply the "Neutral Principles" of Law Developed for Use in All Property Disputes 6

II. The Supreme Court of Washington Transgressed This Court's Mandate in *Hull* and *Maryland and Virginia Eldership* v. *Church of God at Sharpsburg* When It Inquired into the Type of Church Polity to Make a Determination in a Church Property Dispute 8

III. The Washington Supreme Court Erred When It Found That *Hull* Followed *Watson* v. *Jones* 11

Conclusion 12

Tables of Authority

TABLE OF CASES

Maryland and Virginia Eldership of the Church of God, et al. v. *the Church of God at Sharpsburg, Inc., et al.*, 396 U. S. 367, 24 L. Ed. 2d 582 (1970) 7, 8, 10

Merryman v. *Price*, 259 N. E. 2d 883 (1970) 9

Presbyterian Church in the United States, et al. v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, 393 U. S. 440, 21 L. Ed. 2d 658 (1969) 2, 3, 5, 6, 7, 8, 9, 10, 11

Serbian Orthodox Church Congregation of St. Demetrius v. *Kelemen*, 21 Ohio St. 2d 154, 256 N. E. 2d 212 (1970) 9, 10
Watson v. *Jones*, 13 Wall. (80 U. S.) 679 (1871) 2, 3, 11

CONSTITUTIONAL PROVISIONS

United States Constitution:

First Amendment 2, 8, 11
Fourteenth Amendment 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. .....

JAMES P. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington nonprofit corporation, et al.,
Petitioners,

vs.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

Mary Elizabeth Blue Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church, both

Georgia nonprofit corporations through their pastors and moderators, Rev. A. Dale Umbreit and Rev. Todd W. Allen, respectively, move for leave to file a brief *amici curiae* in support of the Petitioners in this cause.

At the October Term, 1968, the *amici curiae* were before this Court as Respondents in the case of *Presbyterian Church in the United States, et al.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, Case No. 71. On January 27, 1969, this Court enunciated the now celebrated "neutral principles" rule in the determination of church property disputes. This Court remanded the case to the Supreme Court of Georgia for disposition not inconsistent with the decision rendered. The Supreme Court of Georgia in applying the "neutral principles" promulgated in *Presbyterian Church in the United States et al.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.*, 393 U. S. 440, 21 L. Ed. 2d 658 (1969) found again that the local churches were entitled to possession of the properties in dispute. This Court denied certiorari on the second petition after remand, 396 U. S. 1041, 24 L. Ed. 2d 685 (1970).

It is the conviction of the *amici curiae* that the judgment of the Supreme Court of the State of Washington, which is sought to be reviewed in the petition for a writ of certiorari, violated the First and Fourteenth Amendments of the Constitution of the United States and the controlling decision of this Court as established in *Presbyterian Church in the United States et al.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church et al., supra*. The effect of the decision of the Washington Court was to ignore this Court's mandate in *Hull* and to embrace the forbidden ecclesiastical inquiry thought permissible under *Watson* v. *Jones*, 13 Wall. (80 U. S.) 679 (1871). Such conduct on the part of the Washington Court consti-

tutes a grave retreat which should be corrected by this Court. As the *amici curiae* read and understand the decision of the Washington Court, it rejected the proscription of *Hull* which condemned the application of any discipline, dogma, or doctrine of a denomination in the determination of church property conflicts. The rejection of the "neutral principles" of *Hull* by the Washington Court is an attempt to resurrect *Watson* v. *Jones, supra,* which was repudiated by *Hull.* As parties litigant in *Hull,* the *amici curiae* urge that this Court grant the writ sought by the Petitioners. The decision of the Washington Court is of national importance as it flouts the command of this Court in *Hull.* It can be used persuasively as precedent in pending and future litigation where a State court may still be oriented towards *Watson* v. *Jones, supra.* Further, the decision of the Washington Court is antithetical to decisions of the Supreme Courts of Ohio and Indiana which applied the "neutral principles" of *Hull* with fidelity.

This Court should grant the Petition so that the error of the Supreme Court of Washington can be purged. The potential chaos resulting from the misconstruction of *Hull* by the Washington Court must be manifest to this Court. The error of that Court should be corrected before it proliferates.

The Movants wish to file the attached brief in order to bring these matters to the attention of the Court, for the Movants believe that their consideration is vital to the presentation and consideration of the constitutional issues involved.

WHEREFORE, it is respectfully requested that this Motion for Leave to File a Brief *amici curiae* be granted and the expressions contained in the brief be considered.

by this Court in resolving the question presented by the Petitioners for the writ of certiorari.

Respectfully submitted,

OWEN H. PAGE

Attorney for Mary Elizabeth Blue Hull Memorial Presbyterian Church, a Georgia nonprofit corporation, and Eastern Heights Presbyterian Church, a Georgia nonprofit corporation

305 Realty Building
Savannah, Georgia 31401

CERTIFICATE OF SERVICE

I, Owen H. Page, counsel for Movants, hereby certify that I have served a copy of the foregoing Motion and attached brief by depositing a copy of the same in the United States mail, properly stamped and addressed to the following:

Mr. Douglas P. Beighle
Perkins, Coie, Stone, Olsen & Williams
1900 Washington Building
1325 Fourth Avenue
Seattle, Washington 98101

This 8 day of November, 1971.

OWEN H. PAGE

Mr. Alfred J. Schweppe
Schweppe, Doolittle, Krug & Tausend
657 Colman Building
Seattle, Washington 98104

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, A GEORGIA NONPROFIT CORPORATION, AND EASTERN HEIGHTS PRESBYTERIAN CHURCH, A GEORGIA NONPROFIT CORPORATION

THE STATUS OF THE AMICI CURIAE

The Movants because of their appearances in prior litigation before this Court have a deep interest in this case and consider it important to all churches that the "neutral principles" of *Presbyterian Church in the United States et al.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.*, which have been jeopardized by the Supreme Court of Washington, be reaffirmed by this Court by granting the writ of certiorari to the Supreme Court of Washington and reversing the judgment of the Supreme Court of Washington. This Court's decision in *Hull* has been a source of hope and resolution for innumerable local churches which find themselves faced with a wrenching dilemma because of denominational aberrations. *Hull* is their refuge and strength.

THE OPINION BELOW

The opinion of the Supreme Court of Washington is printed in Appendix "B" of the Petitioners' brief. It is reported in 79 Wn. 2d 367, 485 P. 2d 615.

STATEMENT OF THE CASE

As the facts in this case are fully stated in the petition for the writ of certiorari, the *amici curiae* wish to incorporate them in this brief. Further, the *amici curiae* join in all that is stated in the Petitioners' brief.

ARGUMENT

I. The Supreme Court of Washington Has Flouted the Command of This Court As It Did Not Apply the "Neutral Principles" of Law Developed for Use in All Property Disputes

The proscription in *Hull* is pronounced: Courts are not to become implicated in extensive inquiry into a church governing body. In face of this directive, the Supreme Court of Washington affirmed the decision of the trial court which by its own admissions (Findings of Fact and Conclusions of Law) indulged in an extensive inquiry into the administrative structure of the denomination. This the trial court did over the vigorous objection of the Petitioners. Cavalierly, the trial court ignored the Petitioners' protest.

Upon church polity and adminstrative discipline of the denomination, the trial court decided for the Respondents in this property dispute. This error could, and should, have been corrected by the Supreme Court of Washington, but it too defied the imperative of *Hull*.

In *Hull*, this Court elevated the objective test over the church polity oriented one of *Watson* when it said:

> "Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *And there are neutral principles of*

> *law, developed for use in all property disputes,* which can be applied without 'establishing' churches to which property is awarded." (Emphasis added)

Continuing, the Court said:

> ". . . the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions."[1]

In *Maryland and Virginia Eldership of the Church of God et al.* v. *the Church of God at Sharpsburg, Inc. et al.*, 396 U. S. 367, 24 L. Ed. 2d 582, in which this Court dismissed the second appeal from the Court of Appeals of Maryland, Mr. Justice Brennan in amplifying the holding in *Hull* said:

> *"Under Watson civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, unlike the identification of the governing body, frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies which exercise general authority within a church is a matter of substantial controversy,* civil Courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy. In other words, the use of the Watson approach is consonant with the prohibitions

---

1. 21 L. Ed. 2d at p. 665.

> of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious polity."[2] (Emphasis added)

The above amplification removed any doubt as to this Court's finding in *Hull*. In *Maryland and Virginia Eldership*, this Court ordained, "Thou shalt not engage in the probe of the allocation of church power or the controversial identity of church polity." To violate this command, as the Washington Court did, is to violate the First Amendment.

The Washington Court fused the function of government and church when it speculated:

> *"It would appear certain that the United States Supreme Court approved the rule laid down in Watson v. Jones, supra, that the decision of the highest tribunal of a hierarchical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to use church property."*[3] (Emphasis added)

Under the injunction of the First Amendment, this is prohibited, and prohibited absolutely.

II. The Supreme Court of Washington Transgressed This Court's Mandate in Hull and Maryland and Virginia Eldership v. Church of God at Sharpsburg When It Inquired into the Type of Church Polity to Make a Determination in a Church Property Dispute

This Court's decree in *Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church et al., supra*—eschew doctrine and

---

2. 24 L. Ed. 2d at p. 584.

3. 485 P. 2d at p. 619.

employ "neutral principles"—is precise. It brooks no breach.

Yet as definite as the message is, as demonstrated by the strict adherence to it by the Indiana Supreme Court in *Merryman* v. *Price*, 259 N. E. 2d 883 (1970) and the Supreme Court of Ohio in *Serbian Orthodox Church Congregation of St. Demetrius* v. *Kelemen*, 21 Ohio St. 2d 154, 256 N. E. 2d 212 (1970), the Washington Court applied the outlawed precedent of *Watson*—examination of church polity. In doing so, it entered the theological thicket which this Court by *Hull* demarcated, "NO TRESPASSING".

The Supreme Court of Indiana in the new constitutional climate of *Hull* in *Merryman* v. *Price, supra*, applied the formal title rule (neutral principles) in refusing to inquire into the hierarchical structure of the denomination. The Court found:

> "The total impact of the *Mary Elizabeth Blue Hull* case as decided by the Supreme Court of the United States and by the Supreme Court of Georgia on remand is to render impotent the implied trust theory in so far as such theory is based upon principles of ecclesiastical law, church doctrine, or church discipline."

Continuing, the Court observed:

> "In short, the position of the Appellants in this case cannot be sustained without reference to ecclesiastical law, church discipline or church doctrine. It is equally clear that the result in this case sought by the Appellees can be justified on neutral principles of property law without reference to ecclesiastical law, church discipline or church doctrine." (259 N. E. 2d at p. 893)

The finding of the Supreme Court of Ohio in *Serbian Orthodox Church Congregation of St. Demetrius* v. *Kelemen, supra,* is in harmony with the judicial determination

of the Indiana Supreme Court in *Merryman*. As in the Indiana case, the Supreme Court of Ohio had before it a property controversy involving a denomination of a hierarchical structure. In reversing the holding of the lower court, the Supreme Court of Ohio under the ordinance of *Hull* held:

> "While we recognize that these matters (organizational relationship of the Mother Church) of internal church organization are chronic sources of disagreement for the parties . . . , the findings of the Court of Appeals are unnecessary and immaterial to a *neutral* law inquiry utilizing principles of law developed for use in *all* property disputes. *Further, the Hull Memorial case offers the strong suggestion that civil courts cannot constitutionally determine* matters of church government."[4] (Emphasis added)

Upon review of the lower court's decision, the Supreme Court of Ohio concluded:

> "After our elimination from consideration of those Court of Appeals' findings regarding church organization on the basis that they are immaterial to neutral law inquiry . . . , what neutral law principles are available as standards in the evaluation of the merits of the dispute? *We look to the ordinary indicia of property rights.*"[5] (Emphasis added)

Contrary to the parochial view taken by the Washington Court in the interpretation of *Hull*, the Supreme Courts of Indiana and Ohio grasped the full impact of *Hull* and gave it the application intended by this Court in *Hull* and *Maryland and Virginia Eldership* v. *Church of God at Sharpsburg, supra*. Impressive to this Court should be the similarity of the church polity between that of the denominations in the Indiana and Ohio cases and that of the

---

4. 256 N. E. 2d at p. 216.

5. 256 N. E. 2d at p. 216.

denomination of the Respondent Presbytery. Both the Indiana and Ohio courts categorically refused to consider church organization. They resolved the property dispute on the basis of deeds, reverter clauses, and the general state corporation laws. All of these are secular authorities which assure the abstinence from ecclesiastical inquiry.

The Washington Court offended *Hull* when it bypassed the secular law of property and followed the tortuous route of ecclesiastical organization. It did this when it used as its road map the Book of Church Order of the denomination.

III. The Washington Supreme Court Erred When It Found That Hull Followed Watson v. Jones

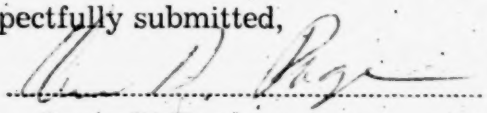
How the Washington Court could conclude that *Hull* approved the holding in *Watson* that a civil court can enforce an ecclesiastical decree is perplexing. Had this Court so ruled in *Hull*, the denomination would have prevailed. For the administrative commission appointed by the Presbytery in *Hull* had taken action similar to that of the Seattle Presbytery. Had this Court wished to have affirmed the church polity oriented rule of *Watson*, it would merely have reversed the Georgia Supreme Court. This Court did not charge the Georgia Court on remand to enforce an edict of an ecclesiastical tribunal.

The Washington Court has made *separation* synonymous with *subservience*. The First Amendment prohibits.

CONCLUSION

Wherefore, it is respectfully requested that this Court grant the petition for a writ of certiorari to the Supreme Court of Washington, and reverse the judgment and direct the Supreme Court of Washington to enter a judgment in favor of the Respondents.

Respectfully submitted,



OWEN H. PAGE

Attorney for Mary Elizabeth Blue Hull Memorial Presbyterian Church, a Georgia nonprofit corporation, and Eastern Heights Presbyterian Church, a Georgia nonprofit corporation